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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43127
Plaintiff-Respondent,)	
)	Bingham County Case No.
v.)	CR-2014-5608
)	
DANIEL EPPS WILLIAMS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Williams failed to establish that the district court abused its discretion by imposing consecutive unified sentences of 25 years, with nine years fixed, upon his guilty plea to two counts of sexual abuse of a child under 16?

Williams Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Williams pled guilty to two counts of sexual abuse of a child under 16 and the district court imposed consecutive unified sentences of 25 years, with nine years fixed.

(R., pp.142-45.) Williams filed a notice of appeal timely from the judgment of conviction. (R., pp.160-63.)

Williams asserts his sentences are excessive in light of his difficult childhood, his mental health issues, his purported remorse and acceptance of responsibility, and his desire for treatment. (Appellant's brief, pp.3-8.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for sexual abuse of a child under 16 is 25 years. I.C. § 18-1506(5). The district court imposed consecutive unified sentences of 25 years, with nine years fixed, which falls well within the statutory guidelines. (R., pp.142-45.) At sentencing, the district court articulated the correct legal standards applicable to its

decision and set forth in detail its reasons for imposing Williams' sentence. (03/03/2015 Tr., p.64, L.16 – p.77, L.1.) The state submits that Williams has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Williams's conviction and sentences.

DATED this 4th day of December, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

64

1 I want to take full responsibility for my actions, and I
2 am ready and willing to face these consequences for
3 those heinous acts. I humbly await your decision, and,
4 as I said before, it is my fault and my fault alone.

5 THE COURT: Thank you, sir.

6 Mr. Williams, are you satisfied with the
7 representation your attorney has provided to you?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you know of any legal reason why I
10 should not sentence you today?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Mr. Reichert, do you?

13 MR. REICHERT: No, Your Honor.

14 THE COURT: Mr. Rogers, do you?

15 MR. ROGERS: No, Your Honor.

16 THE COURT: Mr. Williams, based upon your pleas of
17 guilty, it is the judgment of this Court that you are
18 guilty of the crimes of sexual abuse of a minor child
19 under the age of 16, as outlined in Counts I and II of
20 the Amended Prosecuting Attorney's Information.

21 As part of this process, I've carefully
22 reviewed the record, as set forth in the presentence
23 investigation. These are your only two felony
24 convictions as an adult. The Court does note that, as
25 you've represented in the presentence report, that you

66

1 being sexual abuse of a minor child under the age of 16
2 and the victims being under the age of 13, that they are
3 aggravated offenses for purposes of registration.

4 The Court also found as aggravating factors in
5 your case you had the prior L&L charge as a juvenile,
6 you are a high risk to recidivate, you're uncertain that
7 you can stop, the deceptive polygraph results.

8 Mitigating factors include that you seriously
9 or, "badly," as your attorney phrased it, want
10 treatment; your lack of criminal history; your apparent
11 remorse, that you've expressed; and the fact that you've
12 had what I'm going to call trauma in your life, which
13 you've had no treatment, or, at least as it goes to your
14 prior charge, there was some treatment. Obviously, it
15 wasn't inadequate, but there was that portion of
16 treatment. But it was pretty much a lack of prior
17 treatment.

18 Some things that I'm going to talk about at
19 this point I think are pertinent, just so that you
20 understand, even though I think you may already
21 understand it, and to address some of the comments that
22 have been made by your attorney and the State's attorney
23 here today.

24 I have sat in the shoes that your attorney is
25 sitting in currently. I've sat in the shoes that

65

1 had another lewd conduct charge as a minor that was
2 dealt with.

3 The presentence report recommends
4 incarceration.

5 The psychosexual evaluation indicates that
6 you're a high risk to recidivate and that you are not
7 amenable for community-based placement at this time.

8 I've reviewed the objectives of criminal
9 punishment, as outlined by the Idaho Supreme Court,
10 which includes protection of society, deterrence,
11 rehabilitation, and punishment.

12 I've also considered the factors under Idaho
13 Code 19-2521 relative to the question of whether I
14 should place you on probation or confine you to prison
15 and have taken all of these factors into consideration.

16 The Court acknowledges your age of being 35.
17 And as has been pointed out here today, your
18 LSI score places you at an 18, which is a moderate risk.

19 As I've gone through the report and as I've
20 listened to what's been said here today, I've kind of
21 jotted some things down: what I consider mitigating and
22 those things that I consider aggravating.

23 First of all, under Idaho Code
24 Section 18-8303, the Court does find that, based upon
25 that statute, that you meet, based upon these crimes

67

1 Mr. Rogers is sitting in currently. These are never the
2 types of cases that you want to have to deal with, as
3 Mr. Reichert stated. They are abhorrent. They're
4 heinous. They are unconscionable, any other term that
5 you can come up with. I simply don't understand it.

6 As you've heard here today, you've taken
7 advantage of various families in our community of their
8 benevolence, of their charity, of their friendships.
9 More importantly, you've taken advantage of the
10 innocence of a child -- of more than one child, and
11 there is simply no excuse for that whatsoever.

12 As is indicated, you leave in your wake of
13 your criminal conduct those terms outlined by the
14 prosecutor here today: anger, denial, betrayal,
15 anxiety, and sadness. And I would add turmoil.

16 As has been outlined by both counsel and the
17 representatives of these victims, these young children
18 will have to deal with this for rest of that you are
19 life. You know that because you've gone through it
20 yourself. Hopefully, they get the assistance that
21 perhaps you never did, and it sounds like they're
22 getting it. But they will have to deal with it. But
23 with proper assistance and with the family support,
24 those are issues that they will eventually be able to
25 deal with, and it's not going to be easy.

68

1 And I know they're -- at least they don't
2 appear to be here today, which is a good thing, I think,
3 in and of itself.

4 But the way this was disclosed, her friends --
5 or the friends of the one victims need to be commended
6 for their actions. Those are not easy things to do, not
7 only as a friend, as a child, to make certain
8 disclosures about secrets we're sworn to keep. Even as
9 adults, when we hear things, we recognize at times that
10 we have to make a choice to breach that trust in order
11 to help that individual. And, unfortunately, as it
12 appears at least in the one case, you lose friends over
13 those types of decisions, if you make the decision to
14 try and help rather than maintain that secret.

15 And that's the problem with these types of
16 crimes, in and of itself -- is they're secret. You even
17 told them not to tell their parents.

18 But your attorney has argued well on your
19 behalf. He's made good arguments and has addressed the
20 Court as well as he can, given the circumstances. And
21 because an attorney represents an individual faced with
22 these types of crimes doesn't mean that that attorney
23 condones the actions. As has been stated here today, he
24 doesn't. But it's his obligation as well to provide the
25 best representation he can.

70

1 trauma. And it's not an excuse. And Mr. Reichert
2 didn't say it was an excuse, and I acknowledge that.
3 But those are not excuses for your conduct.

4 As has been pointed out here today as well by
5 Ms. Meacham -- is that these were choices that you made.
6 You had the choice to engage these families. You had
7 the choice to engage the victim in these types of acts
8 or not to. You made the choice to allow yourself to be
9 alone with the victims.

10 Your attorney also addressed the Idaho
11 sentencing database -- the Idaho sentencing information
12 database, which is contained on -- it's attachments 101.
13 It's the sheet with the graph on it right after the
14 presentence report. It also makes mention of it in the
15 presentence report and -- given the argument of those
16 individuals under similar charges and LSI score what the
17 sentences were in those very few cases.

18 But as he also pointed out and as this Court
19 will point out -- is that those are not binding on this
20 Court to follow. They're simply information that allows
21 me to kind of gauge where I am at.

22 The thing that is -- that we don't know about
23 this information are the circumstances of the underlying
24 charge. The charge of sexual abuse of a child under
25 16 -- these individuals are the victims in those cases.

69

1 The State, likewise, has made arguments here
2 today, I think, more fervently and passionately than
3 perhaps I've seen in the past. Not that he hasn't taken
4 great pride in what he does in other cases, but I can
5 see the impact this case has had on him as well. And as
6 I've indicated, they're not easy cases to deal with, and
7 I think all of us here would just as soon not have to
8 deal with them.

9 One thing that struck me today, and in going
10 back and I read this report, is you were in the
11 military. You took upon yourself the values that
12 Ms. Meacham expressed here today, and you have violated
13 the trust and the values of that organization as well.

14 Your attorney has addressed several things
15 here today. Given your history that the Court was aware
16 in going through the presentence report -- that you grew
17 up in poverty, that you were a victim of sexual abuse
18 yourself, that you were involved in another sex crime as
19 a juvenile and had inadequate treatment, you lost your
20 father. You haven't dealt with that loss. You were
21 robbed at gunpoint, have not dealt with that issue.
22 You've had mental health issues.

23 You're not the only one that has grown up with
24 similar types of trauma in their life, and you're not
25 the only one who's not had any or adequate treatment for

71

1 They could have been 15, 14. They could have been five
2 or seven, like here.

3 The psychosexual evaluations in those cases
4 could have been significantly different. We don't know.

5 So it's simply an information to provide this
6 Court with more information in which to adequately help
7 the Court have a basis and an understanding of its
8 sentence and to help the Court in sentencing an
9 individual more appropriately.

10 We've talked about the deceptive polygraph --
11 or at least your attorney has and the State has. Only
12 you know what's going on there. You know whether you've
13 been truthful or not. I understand there can be issues
14 with the polygraph. It can be the way the questions are
15 phrased.

16 The only thing I'm a little disappointed in in
17 this polygraph examination is there's no real context of
18 which exact questions -- it appears there was deviance
19 on all of them, but it doesn't really break it down for
20 me. But the fact is is that the conclusions are that
21 there was deception indicated on the polygraph.

22 Mr. Reichert made the comment that he can't
23 figure out why, given the nature of your disclosures.

24 It could be that the -- if you are, in fact,
25 deceptive and holding things back, it could be because

72

1 of the things that you have failed to disclose are more
2 abhorrent than what you did disclose. I don't know.
3 But that's speculation, and I'm not going to go there.
4 I simply take the findings as they are and that is as
5 deceptive. Why it's deceptive has not been fleshed out;
6 so I don't know.

7 I also indicated that one of the things that
8 it could have been is it could have been the nature of
9 the question asked and maybe an unclarity in your own
10 mind of that question regarding certain instances in
11 your life -- for example, some of the things that were
12 disclosed there in the posttest that are outlined on
13 page 40 of that psychosexual evaluation.

14 The factors that I have to review are
15 protection of society, deterrence, rehabilitation, and
16 punishment.

17 I don't have to give them equal weight, but
18 protection of society is always the primary objective.

19 Deterrence applies not only to you but to the
20 public at large. We can have a long debate about that
21 issue. Obviously, the death penalty, life sentences, or
22 even the fact that a person can go to prison doesn't
23 always act as a deterrence to individuals or the public;
24 otherwise, none of us would be here today.

25 So it depends on the individual. What is a

74

1 psychosexual evaluation are lengthy, but I think the
2 conclusions or the recommendations on 42 and 43 I'm
3 going to read. Each kind of surmise where this case is
4 really at.

5 And I quote: "Mr. Williams is not amenable to
6 community-based placement and/or treatment at that time.
7 It is the writer's clinical opinion that Mr. Williams's
8 current levels of psychological, cognitive, emotional,
9 and behavior dysfunction place himself and members of
10 the community at immediate and distinct risk.
11 Mr. Williams's own comment regarding his uncertainty
12 that he can stop offending bolsters the writer's
13 clinical opinion that community-protection needs as well
14 as the specific clinical needs of Mr. Williams will only
15 be adequately confronted and addressed via placement of
16 Mr. Williams in a secured, monitored facility, where he
17 will have access to intensified and specialized sexual
18 offender treatment services, inclusive of the
19 availability of psychiatric services, lifestyle
20 management training, and vocational and educational
21 training.

22 "It is clear that from a very early age,
23 Mr. Williams has been socialized to view sexuality in a
24 grossly dysfunctional manner and has subsequently
25 developed perpetration beliefs and behaviors entrenched

73

1 deterrent to you may be different than what is a
2 deterrent to Mr. Reichert or anybody else. But it is a
3 factor that we have to consider in sentencing.

4 Rehabilitation -- obviously, that's something
5 that your attorney has focused on. And the psychosexual
6 evaluation indicates what has to occur in your case in
7 order for rehabilitation to be successful. And this
8 Court is considering that.

9 And then there's punishment. These are the
10 types of cases as well that deserve, in my opinion,
11 severe punishment, especially when you look at the
12 criteria under 19-2521. None of you have offered an
13 alternative to probation, but, under the statute, that's
14 the first thing I need to look at.

15 But when I look at all of those factors,
16 there's no way that punishment is an appropriate remedy
17 in this case. And one of those factors, too, is that,
18 if I were to grant probation, that would seriously
19 diminish the serious nature of the offenses in this
20 case.

21 That's just one of the things that the Court
22 considers. There are several things under 19-2521 that
23 would indicate to this Court that probation is not an
24 option.

25 As has been indicated, the PSI and the

75

1 via chronic exposure to and engagement in sexually
2 deviant, yet rewarding, activity. It is of note that
3 this deviant yet highly reinforcing behavioral pattern
4 continues to this day given Mr. Williams's admission of
5 only recently masturbating to ejaculation while
6 fantasizing about incident victims.

7 "As the reader recalls, Mr. Williams's sexual
8 socialization has included his own violent incestuous
9 victimization, chronic consumption of pornographic
10 material, inclusive of child pornography, and engagement
11 in bestiality, frotteurism, voyeurism, pedophilia, and
12 burglary.

13 "Additionally, Mr. Williams reported having at
14 least 11 additional child victims beyond the incident
15 victims, a tally that is arguably incomplete given
16 Mr. Williams's deceptive polygraph results.

17 "To that end, this writer notes the importance
18 of full disclosure and accountability in Mr. Williams's
19 case and strongly recommends that a requirement of
20 Mr. Williams's future treatment program be the gathering
21 of a full and complete sexual history, verified via a
22 polygraph examination.

23 "As previously noted, it is the writer's
24 clinical opinion that Mr. Williams be held accountable
25 for all disclosed acts of sexual abuse/perpetration,

76

1 Inclusive of costs of treatment required by any and all
2 individuals he has victimized as well as their families.
3 "Mr. Williams should be prohibited contact
4 with all of his victims and their families, unless said
5 contact is initiated/desired by said individuals and
6 approved and supervised by qualified agents and
7 therapists."

8 Having weighed all those factors, it is the
9 judgment of this Court, then, Mr. Williams, that, as
10 I've indicated, probation is not appropriate.

11 Your attorney has asked for retained
12 jurisdiction. Given the nature of the recommendations
13 needed for treatment, I don't think retaining
14 jurisdiction is appropriate as well.

15 So the sentence in this case must be one of
16 imprisonment.

17 On Count I, you're sentenced to a fixed and
18 determinate period of nine years, followed up by an
19 indeterminate period of 16 years -- In other words, not
20 less than nine nor more than 25.

21 On Count II, you're sentenced to nine years in
22 the Idaho State Penitentiary, followed by an
23 indeterminate period of 16 years -- In other words, not
24 less than nine nor more than 25.

25 Those sentences will run consecutive to one

78

1 have 42 days in which to file that appeal.

2 You also have the right to seek relief under
3 the Idaho Uniform Post-Conviction Relief Act. That has
4 to be filed within one year from the date your appellate
5 time expires.

6 And you have the right to seek relief under
7 Idaho Criminal Rule 35. That has to be filed within 120
8 days of entry of the judgment.

9 Do you understand those rights?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: If you have questions about any of
12 those rights, make sure you discuss those matters with
13 Mr. Reichert. If he's unable to discuss those or advise
14 you, then you can apply to this Court to have counsel
15 appointed for that purpose.

16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Anything further, Mr. Reichert?

19 MR. REICHERT: No, Your Honor.

20 THE COURT: Mr. Rogers?

21 MR. ROGERS: No, Your Honor.

22 THE COURT: All right. Mr. Williams, you're

23 remanded to the custody of the Bingham County Sheriff's

24 Office to be transported to the proper agent and

25 authority in execution of that sentence.

77

1 another.

2 You're fined in each count the amount of
3 \$2,000.

4 Court costs on each count are \$540.50.

5 You'll pay a civil penalty under Idaho

6 Code 19-5307 on each count in the amount of \$5,000 -- on
7 each count.

8 You're required to register as a sex offender
9 under Idaho Code 18-8307.

10 You're also required to provide a DNA sample
11 and thumbprint to the State of Idaho.

12 You're entitled to 191 days credit through
13 today towards both Counts I and II. Given the new court
14 case that just recently came out regarding credit for
15 time served, that time has to apply to both counts.

16 Do you understand that sentence, sir?

17 THE DEFENDANT: I do, Your Honor.

18 THE COURT: Do you have any questions about it?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: All right. You have the right to

21 appeal this decision. That appeal has to be filed
22 within 42 days. You have the right to be represented by
23 counsel on that appeal. If you cannot afford counsel,
24 you can apply to this Court to have counsel appointed to
25 represent you at public expense. Just remember you only

79

1 If there's nothing further, court is
2 adjourned.

3 (The hearing concluded at 11:38 A.M.)

4 -00000-